

Hamilton County Board of Zoning Appeals - North District

August 17, 2004

Mr. Kirby called the official meeting of the Hamilton County Board of Zoning Appeals - North District to order at 8:05 p.m.

Members Present: Tim Clark, Frank Habig, Ron Hall, Kristin Johnson, and Gerald Kirby. Also present: Charles E. Kiphart, Director; Randy Leerkamp, Legal Counsel; and Linda Burdett, Secretary.

Declaration of Quorum: Mr. Kirby declared a quorum with five out of five members present.

Guests: See guest sheet.

Communications/Reports: None to present.

Approval of Minutes: Mr. Kirby asked for approval of the minutes for July 20, 2004.

Mrs. Johnson **moved to approve** the minutes.

Mr. Clark seconded.

Mr. Hall stated that on page 3 following the vote there was more discussion. I think those three lines in the middle of the page were supposed to be removed.

[Upon further checking the vote was for the Land Use Variance and the discussion and vote that followed was with respect to the variance request for the same petitioner.]

Mr. Kirby called for the vote to approve the minutes as corrected. **3 yes votes... 0 no votes... 2 abstentions.** Mr. Habig and Mr. Kirby were not at the meeting.

New Business: Mr. Kirby stated that both petitions have requested a Suspension of the Rules of Procedure to reduce the number of days required from 20 days to the state required 10 days. The sign was posted on July 27 for both issues and all legal notices were mailed on July 27, 2004 on both issues but the articles in the paper were not printed until July 30th which is 18 days public notice.

Mr. Hall **moved to suspend** the rules from the 20 day notice on **NBZA-RV-0013-0804**.

Mrs. Johnson seconded.

With no further discussion... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.**

Mr. Kirby continued with **NBZA-RV-0013-08-2004** concerning reducing the existing, legal, non-conforming 24 ft. side yard setback down to 22 ft. in order to enlarge an existing garage. Please step

forward and present your case.

Angi Taylor stated her name for the record. What I would like to do is extend the plans for my garage to a 22 ft. width instead of a 20 ft. width. We both drive SUV's and it is a very tight squeeze to try to get both vehicles in and then get out of them. We have three children and we need lots of storage. We just built a house two years ago and had a detached garage. We would like to attach the garage to the home.

Mr. Kirby asked for clarification that the garage was already there and they just wanted to extend it another two feet.

Mr. Kiphart stated there was an existing detached garage there. The structure has been removed. There is nothing there now but a foundation. They are going further into the required setback which is 65 ft. but they are already 24 ft. into the setback so they want to go 2 ft. further out and put a new foundation in and then put the addition and connect it to the garage. You show on your plans that this room is an office/study. Is it going to be a bedroom? (2) There are different code requirements for a nursery/bedroom. You'll also have to have your septic system re-checked if your going to put a bedroom there.

Mrs. Taylor stated it will be a nursery for the time being. (2) Ok.

Mr. Hall asked if the drive was a private drive.

Mrs. Taylor answered... correct.

Mr. Habig asked if there was a road that came up the property line. (2) The easement goes along the side of the garage then.

Mr. Kiphart stated that Craig Avenue is on the south side of the lot. (2) The easement is for the road that goes into that subdivision. It is considered the same as a local road.

Mr. Hall asked about dedicated easement. (2) It looks like the easement is mostly onto your property.
(3) So there is only going to be about 10 or 12 ft. between your garage and where the gravel is.
(4) Did they do a dust control on it?

Unidentified male voice: It has one mailing address for every house back there and just segregated lots and it's supposed to stay that way. (2) Yes.

(3) Mrs. Taylor stated it would be 18 ft. (4) No. They don't do anything.

With no further questions from the board... Mr. Kirby opened the hearing to the public at 8:15 p.m. and with no one stepping forward to address the board... Mr. Kirby closed the public portion of the hearing at 8:15 p.m. and asked for a motion.

Mr. Hall **moved to approve** as presented.

Mrs. Johnson seconded.

Mr. Hall stated that the property is already improved and much of the infringement was pre-existing so this would only be slightly additional. I also see the property owner as being the one most negatively impacted by it since this is an easement. They are putting themselves closer to the private drive.

Mrs. Johnson stated that it looked like this would be a positive improvement.

With nothing further from the board... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.**

Mr. Kirby continued with **NBZA-RV-0014-08-2004** concerning the reduction of road frontage from 330 ft. down to 108.645 ft. for two 14.25 acre lots - A & B. Please step forward and present your case.

Marcia Fox, of 12310 East 266th Street, Arcadia, stated her name and address for the record. This 28.5 acre tract of ground and 375 surrounding acres has been owned by my parents for 35 years or more. After my mother's death, 85 acres of the farm were left to two of my brothers and myself with only 700 ft. of road frontage to the 85 acres. I ended up with 217.29 ft. of road frontage after the ground was divided into three equal tracts of ground. I was also left a house and three acre in a life-estate next to this. I would like to pass my ground down to my two daughters and their families so they are able to own part of the family farm and build a home on it. They plan on having one driveway go along side of my place and then go off to both of their properties. They both plan on having two to three acres for a yard and then farm the rest of it.

Mr. Hall stated it appears that this is already a deeded parcel all by itself. (2) When was that created as a separate parcel from the rest of the farm? (3) It was deeded to you by the estate? (4) Lots A & B you have unrestricted title to that? It is not subject to a life estate? (5) These three parcels... are they being farmed together at this point?

Ms. Fox stated that it was separate. It was a three acre life estate. (2) My mom died in June of 2000 and it was approximately a year later... maybe not that long. (3) Yes. It was actually left in her will. (4) No. That is separate. (5) Yes.

Mrs. Johnson asked if Ms. Fox knew where the location of the two houses would be on the parcels.

Ms. Fox stated that one will go back at least 700 ft. off the road. The other one will be a little farther than that.

Mr. Hall asked if lots A & B had been surveyed off yet. (2) Do you anticipate that the road frontage will be equal for both parcels? (3) On the three acres... was that an existing home or did you build a home? (4) How deep is your property north to south?

Ms. Fox answered... (2) Yes. (3) It was existing. (4) Approximately 2,600 ft.

With nothing further from the board... Mr. Kirby opened the hearing to the public at 8:27 p.m.

Bernie Morgan stated his name for the record. I'm Ms. Fox's brother. The depth on the west side of her

property is 3,328.98 ft. and the east side is 1,963.71 ft. I have examples of letters indicating her interest in selling this property in 2002. In 2003 I got a letter from my attorney with a copy of a letter from Ms. Fox concerning the sale of the real estate. April 2004 Ms. Fox's attorney sent a letter making a one time offer to purchase the real estate with the exception of 233.6 ft. of road frontage and back to the first fence which is adjacent to the real estate she owns. The last sentence states... my client is desirous of selling her parcel of real estate and will sell to an interested individual after the transfer in this lawsuit. After the deeds were transferred to the three of us she had a sign with 25 acres of the 28 acres for sale. There are limited locations to construct new homes and I'm concerned this could create water run-off and drainage concerns since this is heavy soil.

Mr. Kirby asked Ms. Fox if she would like to respond to what was said.

Ms. Fox stated that Mr. Morgan brought up different times I had said something about selling it but he didn't mention that this was a 3 ½ year battle over this ground on how to divide it. He went into personal family things which I don't think have anything to do with this variance here tonight. I was just tired of fighting with them so I did put a for sale sign out for a while. Three and a half years ago we went and talked to Mr. Kiphart and we had a lawyer that went and talked to Mr. Kiphart. We decided to go ahead and try to get the variance. As soon as my mom passed away and we did find out the ground was ours, I let Mr. Morgan know that I wanted the girls to be able to build homes.

With no one else stepping forward to address the board... Mr. Kirby closed the public portion of the hearing at 8:37 p.m.

Mr. Hall made a **motion to suspend** the rules requiring 20 days public notice for this hearing.

Mrs. Johnson seconded.

With no further discussion... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.**

Mr. Kirby **made a motion** to approve as presented.

Mr. Clark seconded.

Mr. Clark stated that his concern was dividing up land possibly for sale avoiding housing addition regulations and things like that. I don't want to divide land up so it can be sold. It is different if it's family members and keeping the property in the family.

Mr. Habig stated that this is over the 10 acre lot. I'm a little worried about the road frontage. Regardless of who is going to end up with the property, we still have to deal with two driveways. Although they talk about one driveway going in, sooner or later someone else is going to own that property and somebody is going to want their own driveway in there. We have to think about two driveways going in and this is a narrow stretch of ground and it's a difficult one to divide up. Whatever we set here, these next two 28 acres could possibly be coming at us for a variance. I don't like the way the corner cuts so close to the three acres.

Mr. Hall stated that he was troubled by several things on this. This is a very unusual shaped piece of property; extremely difficult to do something with. A parcel that is 3 acres has been created, not that that is illegal, but what is happening is back-dooring into parceling this piece of property up into three parcels that are extremely narrow and would be extremely long almost unusable properties. Not that they can't be farmed. One property will be 108 ft. wide at the front by 3,000 ft. deep... I don't think that is something that we want to be sanctioning for property division. At some time in the future these parcels connected with other parcels may have some very nice potential for a large lot subdivision. The fact that the owner has had this for sale, to me, has absolutely no bearing whatsoever. That is irrelevant. She owns the property... she can sell it anytime she wants to... to whoever she wants to whether it's to her children or to strangers. Dividing that parcel up with a narrow bottle neck as suggested also disturbs me. All that does is contribute to the un-usability of the property and the fact it will be difficult to take care of or easy to neglect. I can't find a hardship here. The petitioner, I think, says in the material that she gave us that there isn't a hardship. This property is zoned for agricultural and large lot residential and there is no reason whatsoever that this parcel of property as it exists right now can't be used for agricultural or large lot residential use. The family problems are also irrelevant and have no bearing here. We are looking at the use of the land and the requirements for its use.

Mr. Clark stated that they are trying to use it for large lot development, its just can we have 108 ft. instead of 330 ft. I think it's bad planning to have lots that long.

With no further comments... Mr. Kirby called for the vote. **1 yes votes... 4 no votes.** Mr. Kirby voted yes.

Old Business: None to present.

Director's Report: Mr. Kiphart advised the board that he had invited the Webbs to come tonight. This concerns the site up on State Road 37 where there was a variance granted twice for a garage to be built prior to a log home being built.

Scot Webb stated his name for the record. I think you gave me 18 months to complete.

At the request of staff... Mr. Kirby granted a five minute break.

Mr. Kiphart stated that the original variance was approved December 2000 for 18 months. The second variance was approved September 2002 again for 18 months to have the house completed and the Certificate of Occupancy issued. That expired in April of this year.

Mr. Leerkamp advised the board that right now he is in violation of the zoning ordinance. So he will either have to apply again or, if he didn't do anything, we would bring enforcement action on behalf of the BZA.

Mr. Kiphart advised the board that there was nothing they could do tonight legally to extend it. I wanted the board to be aware of what the situation was. Do we concur that we would like to have him back on the agenda next month?

Mr. Hall stated that he would like to do what we can to accommodate this fellow so that he can get his project completed and finished without legal action.

Mr. Kiphart asked Mr. Webb when the house would be completed.

Mr. Webb stated that he works during the day and is up there almost every night and on weekends. I am doing most of the stuff I can myself to save money. We only have a few circuits on the wiring. The fireplace has been ordered and as soon as we get that installed we are ready for the rough-in inspection.

Marion Inman was identified by Mr. Webb as someone working with him to get the project done. Basically I'm helping them in a consulting position and I am doing some work for them that they don't feel capable of doing. The final inspection will depend on how much of that they sub out. In the interest of saving as much money as they can that won't be a real speedy project. Part of the problem with the project is that this is a log cabin and everything you do to it is an unusual step. There has also been some sickness in the family.

Mr. Clark asked when the building permit expired.

Mr. Kiphart answered... September 23, 2004.

Mr. Habig stated that maybe we should put it on next month's agenda and that will give you 30 days to come up with some type of timetable for us to take a look at.

Mr. Kiphart advised Mr. Webb to contact the Tax & Mapping Office first thing in the morning for the property adjoiner list. Then give me a call in the morning and we'll get together and I'll go over everything.

Mr. Kiphart advised the board that there was nothing new on the office move.

Mr. Kiphart advised the board that we did have the second public meeting on updating the comprehensive plan. The turn out was about 35 people present. They did a visual survey and had people fill out forms on their reaction to pictures that they showed. We have been receiving questionnaires back that were turned over to the consultants. Our next meeting will be in four to five weeks. It will be in Wayne Township and we're planning on having it in Durbin Elementary School. I was going to limit the mailing to those in the township but everyone would be invited. We will try to get newspaper coverage on it. We will add the TV and radio stations to the list.

Legal Counsel Report: Nothing to present.

The next North BZA meeting will be held September 21, 2004.

With nothing further to come before the board... Mr. Kirby asked for a motion to adjourn.

Mr. Habig **moved to adjourn.**

Mrs. Johnson seconded.

With no further comments... Mr. Kirby called for the vote. **5 yes votes... 0 no votes.**

Meeting adjourned at 9:17 p.m.

Gerald Kirby, Chairman

Date

Linda Burdett, Secretary

Date